

AN ACT

ENTITLED, An Act to revise certain provisions relating to telemarketing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 37-30A-8 be amended to read as follows:

37-30A-8. The provisions of this chapter do not apply to a transaction:

- (1) Made by a merchant who operates an established business that has a fixed permanent location, who displays or offers consumer goods or services for sale on a continuing basis, and less than twenty-five percent of total new sales are made by unsolicited consumer telephone calls;
- (2) In which the business establishment making the solicitation is establishing a business-to-business relationship or has a clear, preexisting business relationship with the consumer, if that relationship resulted in the consumer becoming aware of the full name, business address, and telephone number of the establishment; or
- (3) In which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, catalog, or other mailing material of the telemarketer that contains:
 - (a) The name, address, and telephone number of the telemarketer;
 - (b) A full description of the goods or services being sold along with a list of all prices or fees being requested, including any handling, shipping, sales tax, or delivery charges; and
 - (c) Any limitations or restrictions that apply to the offer.

Section 2. That § 37-30A-1 be amended to read as follows:

37-30A-1. Terms used in this chapter mean:

- (1) "Consumer," an actual or prospective purchaser, lessee, or recipient of consumer goods

or services bought primarily for use for personal, family, or household purposes;

- (2) "Consumer goods or services," any tangible personal property or services, including merchandise as defined by subdivision 37-24-1(7), normally used for personal, family, or household purposes, and not for resale or for use or consumption in a trade or business;
- (3) "Consumer telephone call," a call made by a telephone solicitor or telemarketer for the purpose of soliciting a sale of any consumer goods or services to the person called, or for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes;
- (4) "Telemarketer," any person or organization who individually or through salespersons, initiates the sale, lease, or rental of consumer goods or services, or offers gifts or prizes with the intent to sell, lease, or rent consumer goods or services by telephonic means or by postcard or other written notice sent through the mail in which the goods and services and all the material terms of the transaction, including price and any fees or handling, shipping, or delivery charges, are not fully described and which request that the consumer contact the seller to initiate the transaction. This term does not include any not-for-profit or charitable organization exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of January 1, 1997;
- (5) "Unsolicited consumer telephone call," a consumer telephone call other than a call made:
 - (a) In response to an express request of the person called;
 - (b) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;
 - (c) To any person with whom the telemarketer has an existing business relationship;

- (d) By a newspaper publisher or such publisher's agent or employee in connection with such publisher's business; or
- (e) To any person for the purpose of establishing a date and time for an appointment with a person licensed under Title 58 which will take place at a mutually agreeable physical location.

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I certify that the attached Act
originated in the

SENATE as Bill No. 33

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 33

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State